



lump sum settlement and relinquishing her right to review and modification of the settlement award and her right to future medical treatment.

**FINDINGS OF FACT**

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

1. Claimant commenced working for the respondent on January 21, 1975. At the time of claimant's preliminary hearing testimony before the ALJ on February 5, 2002, claimant was on a medical leave of absence from respondent with a last day worked of July 18, 2001.

2. Claimant has a long history of respiratory problems starting in 1978 while working for the respondent.

3. In 1979, claimant was diagnosed with bronchiectasis. Surgery was required and Dr. Conception of Wichita, Kansas, performed a left lower lobectomy.

4. After the left lung operation, claimant required numerous additional medical treatments through emergency room visits and hospital admissions for continuing respiratory problems through the 1980s.

5. In 1990, because of claimant's continuing respiratory problem, she went on her own to the National Jewish Medical and Research Center (National Jewish Center) located in Denver, Colorado. The National Jewish Center is the nation's leading treatment center for respiratory diseases and immune disorders.

6. Claimant was first examined and evaluated at the National Jewish Center in December 1990 with a history of asthma being diagnosed since 1978. The National Jewish Center physicians examined the claimant and diagnosed her with bronchiectasis and various modalities of treatment were prescribed.

7. Claimant returned to the National Jewish Center in July 1991. At that time, claimant gave a history of returning to work for respondent in January 1991, after returning home to Wichita from the National Jewish Center in December 1990. Shortly thereafter, claimant returned to work and after a few days at work claimant was again hospitalized for severe respiratory symptoms.

8. Claimant saw Joseph Jarvis, M.D., at the National Jewish Center during the July 1991 visit. He reviewed Material Safety Data Sheets of several different chemical substances that claimant was exposed to while she was employed by respondent.

9. Dr. Jarvis' assessment was that claimant's history was compatible with occupation-related exacerbation of her asthma condition. He opined that claimant's symptoms would very likely worsen from exposure to many of the substances contained in the Medical Safety Data Sheets claimant had supplied. The doctor also opined that claimant's initial symptoms and problems with asthma could be caused by workplace exposures. Dr. Jarvis could not design appropriate equipment to protect claimant from the chemical exposure and recommended she seriously consider finding alternate employment.

10. In 1991, claimant was taken off work because of her continuing severe respiratory problems and she did not return to work until five years later on May 10, 1996.

11. During that period of time, claimant was treated primarily by board certified allergy/immunologist M.H.V. Strickland, M.D., pulmonologist Daniel C. Doornbos, M.D. and Roberta L. Loeffler, M.D.

12. As a result of claimant's chemically induced asthma, she made a claim for workers compensation benefits. On February 22, 1995, claimant settled her workers compensation claim with respondent before ALJ Shannon S. Krysl. As of the date of the settlement, claimant had received \$63,494 representing 228 weeks of temporary total disability benefits. Respondent had also paid medical expenses in the amount of \$76,680.34. At the settlement hearing, respondent denied the compensability of the claim and claimant relinquished her rights to review and modification of the settlement award and the right to future medical treatment. Claimant received, as a strict compromise of those issues, an additional lump sum settlement in the amount of \$61,500.

13. During the time claimant was off work and was treated for her asthma condition, her respiratory problems improved. On December 21, 1995, Dr. Strickland opined that claimant's pulmonary disease had stabilized. He released claimant to work in a smoke free, chemical odor free environment at a desk job or a job not involving physical labor.

14. Claimant contacted respondent and the respondent returned claimant to work on May 10, 1996, as a lead person in Industrial Park Building-three (IPB-3). The working environment that claimant returned to was clean and air conditioned.

15. Respondent's Active Medical Recommendations/Qualifications sheets showed as of March 14, 1996, that claimant was restricted to work in a smoke free and chemical odor free environment. In 1998, additional restrictions were noted of no work in areas with irritant fumes; must work in air conditioning; and no work in areas with skin irritants without protective equipment.

16. In 1997, respondent moved claimant to a different area of IPB-3 that exposed claimant to chemicals contained in cleaning solvents and fumes from mini riveters.

17. In the latter part of 2000, respondent then moved claimant to Industrial Park Building-One (IPB-1). That building was not air conditioned and was more crowded with workers and machines.

18. Commencing in 1999, claimant started developing upper respiratory problems with irritation in her throat and upper chest area instead of her previous symptoms which had centered in her lung area.

19. On January 26, 1999, Dr. Doornbos had claimant undergo a flexible fiberoptic bronchoscopy diagnostic procedure because he suspected claimant had a vocal cord dysfunction as a result of his observations of claimant over a period of months. Dr. Doornbos' findings from the bronchoscopy procedure confirmed the presence of vocal cord dysfunction which at least partially mimics asthma.

20. After the bronchoscopy procedure, claimant again went to National Jewish Center for treatment in June 1999. This time, she was evaluated for possible vocal cord dysfunction. Claimant's complaints on that visit were more in her throat and upper respiratory area compared to her previous complaints involving her lungs. The National Jewish Center also had the results of the January 1999, bronchoscopy procedure that demonstrated vocal cord dysfunction.

21. During the June 1999 visit, the claimant was examined and evaluated at the National Jewish Center by Ronald Balkissoon, M.D., Occupational and Pulmonary Medicine Staff Physician. His impression was that claimant likely had some component of irritant-induced vocal cord dysfunction along with asthma, gastroesophageal reflux and rhinosinusitis.

22. Dr. Doornbos' September 28, 2000, medical note, found claimant with a markedly hoarse voice and a fair amount of stridor as well as expiratory laryngeal wheezing. His assessment was, although the claimant does have asthma, the majority of her current problems really relate more to her vocal cord spasms than the asthma itself. The severe vocal cord spasms will actually obstruct the airway leading to near respiratory failure. Claimant also made the complaint to Dr. Doornbos that she was having difficulty with the environmental conditions while working at respondent. She requested that Dr. Doornbos restrict her from being involved with chemical fumes and she needed an air conditioned work space. Dr. Doornbos wrote out a release for those work restrictions but also felt that claimant should not be exposed to any chemicals and it would, therefore, be to her benefit to be off work entirely.

23. On Monday, July 16, 2001, claimant returned to work from a medical leave of absence related to a carpal tunnel release surgery. Claimant had been off work since June 30, 2001. Claimant worked July 16, 17, and 18.

On July 18, however, claimant testified she started having breathing problems. Because of her breathing problems, claimant carried portable oxygen equipment as prescribed by Dr. Doornbos. Claimant testified that when she returned to work those three days in July she experienced exposure to chemical fumes and graphite dust. That exposure caused her throat to close and she could not get enough air.

24. On July 19, claimant still was having breathing problems and called and notified respondent that she was not able to return to work that day.

25. Claimant also was unable to return to work on Friday, July 20. On Saturday morning, July 21, claimant experienced an acute respiratory attack at home and was taken to the hospital by ambulance.

26. Claimant was admitted to the hospital and required intubation and was placed on a mechanical ventilator to assist her breathing. Claimant was given aerosol bronchodilators and IV steroids. Claimant improved and was extubulated and taken off the ventilator. She was discharged on July 27, 2001.

27. On August 4, 2001, claimant was again admitted to the hospital with marked respiratory distress. She was seen by her treating physician, Dr. Doornbos. His impression was severe vocal cord dysfunction with multiple recent severe episodes of upper airway obstruction and bronchial asthma of unclear severity. Claimant was treated with a helium-oxygen mixture and aerosol treatments. Dr. Doornbos also opined that claimant needed a tracheostomy surgery to enable her to open her breathing pathway when she was experiencing an acute respiratory attack. Claimant was discharged on August 13, 2001.

28. Also during the August 4, 2001, hospitalization, claimant had tracheostomy surgery where a tube was inserted to relieve obstruction of the airway and facilitate breathing. After the claimant was discharged on August 13, 2001, she was again admitted into the hospital from August 17, 2001 through August 23, 2001, with acute respiratory problems.

29. Claimant returned to the hospital emergency room on August 28, 2001, with complaints of cough, shortness of breath, and no improvement following breathing treatments. Dr. Doornbos examined claimant in the hospital and his impression was severe vocal cord dysfunction, status post-tracheostomy but still symptomatic.

30. At the February 5, 2002, preliminary hearing, claimant testified that her respiratory problems she suffered in 1991 through 1995 involved her lungs. But presently her problems involve her throat.

31. Claimant's treating physician, pulmonologist, Dr. Doornbos, wrote claimant's attorney a letter dated November 26, 2001, concerning claimant's current medical status and condition.

Dr. Doornbos opined, "She has asthma, which has been for many years, slowly worsening, partly as a result of ongoing exposure to chemicals at work...."<sup>1</sup> He went on to opine that claimant's breathing has gradually worsened to the point where she is barely able to function on a daily basis. At work, claimant over uses her voice and her symptoms could be worsening as a result of her continuing chemical exposure at work. Claimant is presently not able to work and she should never work again around any chemical fumes which is unavoidable while working for respondent.

32. In a letter dated February 7, 2002, Roberta L. Loeffler, M.D. wrote to claimant's attorney and opined, "I believe that exposure to solvents, chemicals, and other airborne pollutants aggravated [the] respiratory disease in this patient...." The doctor concluded, "I think it is unlikely that Karen is currently able to return to work under any circumstances due to the degree of her disability secondary to her chronic lung disease."<sup>2</sup>

33. Marsha Olson worked with claimant first in IPB-3 and then worked with claimant in IPB-1, after she was transferred with claimant in the first part of 2001. IPB-3 was air conditioned and climate controlled. In contrast, IPB-1 was not air conditioned and the work environment contained chemical fumes and dust. Ms. Olson testified that after claimant was transferred to IPB-1 she observed that claimant's breathing problems increased because of the chemical exposure.

34. Diana L. Pike, a 17 year veteran employee of respondent, testified that she also worked in IPB-3 and then was transferred to IPB-1. Ms. Pike started having breathing problems about a year after she transferred into IPB-1. She experienced breathing problems as a result of her exposure to the cleaning solvent MPK. The Medical Safety Data Sheet for MPK indicates that MPK may cause respiratory irritation. The Medical Safety Data Sheet also indicated that certain medical conditions such as asthma, bronchitis and other preexisting respiratory disorders may be aggravated by exposure to MPK.

As a result of Ms. Pike being allergic to MPK, she now works at all times with a hooded respirator. Ms. Pike also testified that claimant was exposed to MPK because claimant was the lead person and had to work around the mini riveters when parts were soaked in this cleaning solution.

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<sup>1</sup> P.H. January 10, 2002, Cl. Ex. 1.

<sup>2</sup> Claimant's March 23, 2002, submission letter to the ALJ, Ex. D.

35. Philip G. Green, claimant's supervisor while she was employed in building IPB-1, testified in this case on behalf of the respondent. He knew that claimant had breathing problems but did not know she had restrictions against working in an environment exposed to chemicals. Mr. Green testified claimant never complained to him about excessive fumes or graphite dust in the work area. Air quality tests were also taken in claimant's work area and Mr. Green testified that they showed no over exposure. Mr. Green also knew that MPK could irritate a person's respiratory system.

Moreover, Mr. Green was also aware that claimant had to leave work on occasion because of her breathing difficulties. Mr. Green also acknowledged that he noticed the claimant demonstrated breathing difficulties by wheezing and a hoarse voice.

36. At respondent's insurance company's request, claimant was examined and evaluated January 23, 2002, by occupational medicine physician Alan J. Parmet. Dr. Parmet reported his findings in a report dated February 12, 2002. Before claimant's examination, Dr. Parmet was provided various medical records and reports of doctors who had examined and treated claimant for her ongoing respiratory problems. Dr. Parmet reviewed those medical records, took a history from the claimant and conducted a physical examination of claimant.

He diagnosed claimant with (1) severe vocal cord dysfunction causing pseudo asthma, (2) severe controlled asthma, (3) status post surgical carpal tunnel right hand release, (4) gastroesophageal reflux and hiatus hernia, status post endoscopic Nissen application, and (5) status post cataract extraction and intraocular lense placement.

Dr. Parmet determined that claimant's vocal cord dysfunction was not related to her work environment. He opined that the etiology of the condition was idiopathic, but the gastroesophageal reflux was a major contributing factor. The doctor also concluded there is no direct toxicologic cause for the vocal cord dysfunction condition. The doctor further concluded that claimant's asthma condition contributed to her work related chemical exposure as well as the gastroesophageal reflux. Dr. Parmet further found the asthma condition was stable and effectively unchanged over the past 10 years.

#### **CONCLUSIONS OF LAW**

1. The Board concludes the ALJ's preliminary hearing Order denying claimant's request for preliminary hearing benefits should be reversed.

2. The Board finds claimant's testimony and the testimony of claimant's co-workers coupled with the medical treatment records and reports of claimant's treating physicians Drs. Doornbos, Loeffler and Balkissoon proved that claimant's vocal cord dysfunction condition was caused by claimant's exposure to chemical irritants in the workplace. And that same chemical exposure in the workplace aggravated her preexisting asthma condition making that condition worse.

3. On February 22, 1995, at the time claimant settled her previous workers compensation claim, respondent did not admit that claimant's asthma condition was either caused or aggravated by exposure to chemicals and other contaminants in the workplace. Respondent had paid temporary total disability benefits for over four years and medical expenses for treatment of claimant's asthma condition. In the settlement, the respondent further agreed to pay an additional \$61,500 as a compromise lump sum settlement in exchange for claimant relinquishing her right to future medical treatment and review and modification of the settlement award.

At the time of the settlement, claimant had not been diagnosed with vocal cord dysfunction. In fact, claimant did not start to have upper respiratory system complaints until sometime in 1997 and those symptoms progressed through the last day claimant worked of July 18, 2001.

In 1999, Dr. Doornbos had claimant undergo a diagnostic bronchoscopy which determined that claimant had vocal cord dysfunction. In June 1999, claimant was examined and evaluated at the National Jewish Center by Ronald Balkissoon, M.D. and his impression was claimant had some component of irritant induced vocal cord dysfunction.

4. The Board concludes that the greater weight of the credible evidence contained in the preliminary hearing record proves that claimant's vocal cord dysfunction is a new and separate injury caused by claimant's exposure to chemicals and contaminants in the workplace and not the natural consequence of the January 1, 1991, accidental injury settled on February 22, 1995.

5. After claimant returned to work in 1996, her asthma condition had improved and continued to be stable until she was again exposed to chemicals and other contaminants in 1997. In the latter part of 2000, respondent transferred claimant to IPB-1 which was not air conditioned and exposed claimant to more chemical and contaminants which caused her vocal cord dysfunction and further aggravated her preexisting asthma condition and made it worse. By working claimant in an environment that included chemicals and other contaminants, and was not air conditioned, respondent violated restrictions imposed on claimant. Those restrictions were clearly identified on respondent's own Active Medical Recommendations/Qualifications sheets. Both Dr. Doornbos and Dr. Loeffler opined that claimant's asthma condition had been aggravated by her ongoing exposure to chemicals and other contaminants in her work environment while employed by the respondent.

6. It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing condition or intensifies the

affliction.<sup>3</sup> The test is not whether the job related activity caused the condition but whether the job related activity or injury aggravated or accelerated the condition.<sup>4</sup> Here, the preliminary hearing record establishes that claimant's preexisting asthma condition was aggravated and worsened as claimant was exposed to chemicals and contaminants in the workplace and such aggravation constitutes a new injury under the Workers Compensation Act.

7. Thus, having found this claim compensable, the Board appoints Dr. Doornbos and Dr. Loeffler as claimant's authorized treating physicians and for all referrals they find necessary to treat the effects of claimant's work-related respiratory injuries.

8. The Board also finds claimant is entitled to temporary total disability benefits commencing July 19, 2002, the day after her last day worked for the respondent and continuing until she is determined to have met maximum medical improvement or released for substantial gainful employment. As agreed to by the parties, claimant is entitled to be paid at the maximum weekly compensation rate of \$417.00.

9. Respondent is also ordered to pay as authorized medical treatment all reasonable and necessary medical expenses, in accordance with the medical fee schedule, incurred since July 18, 2001, for the treatment of claimant's work-related respiratory injuries.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>5</sup>

**WHEREFORE**, it is the finding, decision, and order of the Board that the ALJ's April 8, 2002, preliminary hearing Order, should be, and is reversed and the Board finds claimant suffered an accidental injury that arose out of and in the course of her employment and respondent is ordered to provide medical treatment, pay medical expenses as authorized medical and temporary total disability benefits, as set forth above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2002.

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<sup>3</sup> *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976); *Harris v. Cessna Aircraft Co.*, 9 Kan. App.2d 334, 678 P.2d 178 (1984).

<sup>4</sup> *Hanson v. Logan U.S.D.* 326, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* \_\_ Kan. \_\_ (2001).

<sup>5</sup> K.S.A. 44-534a(a)(2).

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**BOARD MEMBER**

- c: Michael L. Snider, Attorney for Claimant  
Kim R. Martens, Attorney for Respondent  
Jon L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation